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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/840,159	05/06/2004	Torsten Gogolla	DT-6801	7390
30377	7590	02/13/2008	EXAMINER	
DAVID TOREN, ESQ. ABELMAN FRAYNE & SCHWAB 666 THIRD AVENUE NEW YORK, NY 10017-5621			AL SOMIRI, ISAM A	
ART UNIT	PAPER NUMBER			
		3662		
MAIL DATE	DELIVERY MODE			
02/13/2008	PAPER			

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/840,159	<b>Applicant(s)</b> GOGOLLA ET AL.
	<b>Examiner</b> Isam Alsomiri	<b>Art Unit</b> 3662

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 20 November 2007.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-5 and 7-22 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 18-22 is/are allowed.  
 6) Claim(s) 1-5,11-15 and 17 is/are rejected.  
 7) Claim(s) 7-10 and 16 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 06 May 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

#### DETAILED ACTION

##### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-5, 11-15, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greller et al EP0828165A2 in view of Gardiner et al US 7,125,145 or Rickman US 6,928,029.** Referring to claims 1 and 11, Greller disclose in figure 1 an electro-optical hand-held distance measuring instrument with a housing that can be held in the hand and with an electro-optical distance measurement module with an electric beam source (1) for generating an optical measurement beam (2), a beam receiver (1) for receiving portions of the measurement beam (3) that are backscattered by an object to be measured, and an output device (10) for the determined distance, and a mechanical distance measuring device (34, 41); wherein the module has a control device (11-18 or 26) that is connected with the mechanical distance measuring device (41,34) and that is connected to the electro-optical distance measurement module in a controllable manner (see figure 1).

Greller does not teach the mechanical distance measuring device including an optically readable measurement scale. Gardiner teaches a hand held device (10) that includes a range finder (614) and "a measuring tape" (see col. 5:26-34); which reads on the claimed mechanical distance measuring device including an optically readable

measurement. It would have been obvious to modify Greller to further include or substitute a measuring tape instead of the mechanical device (34,41) to measure small distances that do not require the use of the rangefinder.

Richman also teaches a similar device including a retractable tape that includes indicia corresponding to a distance; which reads on the claimed mechanical distance measuring device including an optically readable measurement. It would have been obvious to modify Greller to further include or substitute a measuring tape instead of the mechanical device (34,41) to measure small distances that do not require the use of the rangefinder.

Referring to claim 2, the combination of Greller and Rickman teaches a connection element (Rickman: figure 1 [44]) is provided that forms a manually detachable interface to the mechanical distance-measuring device. Furthermore, although Gardiner does not mention the specifics of the measuring tape, it was very well known at the time of the invention that measuring tapes includes a locking feature, which reads on the claimed connection element. It would have been obvious to modify the combination of Greller and Gardiner to include the locking feature with the measuring tape to make accurate measurement.

Referring to claim 3, Greller teaches an externally accessible operator control (11-18) for activating the optical measurement beam (2) and triggering the optical distance measurement process.

Referring to claim 4, Greller teaches the electro-optical distance measurement module has a computing device (26) with additional calculation functions including the addition of distances.

Referring to claim 5, the combination of Greller and Gardiner or Rickman teaches a common first reference point (31) for measuring the distance (X) with the mechanical distance-measuring device (34,33) and with the optical measurement beam (2) (see Greller figure 1).

Referring to claims 12-13, the combination does not teach the mechanical device is a measuring/folding rule, which is a very obvious alternative to the tape-measuring device. Substituting a folding rule instead of a measuring tape would have very obvious alternative method to perform the same function. Further, it would have been very obvious to include the folding rule including 5 to 15 rotationally swivelable members with a length between 10 cm and 30 cm based on design choice and range capability.

Referring to claim 14, the externally accessible operator control (11-18) is a press button (see Greller figure 1).

Referring to claim 15, the additional calculation functions further include at least one of the subtraction of distances and the calculation of surfaces and volumes.

Referring to claim 17, the combination of Greller and (Gardiner or Rickman) is silent about the measuring tape being self-stiffening, spring pretensioned steel measuring tape. However, at the time the invention was made self-stiffening, spring pretensioned steel measuring tapes were very well known. It would have been obvious

if not already inherent to use the self-stiffening, spring pretensioned steel measuring tape because of its simple and quick extension.

***Allowable Subject Matter***

Claims 7-10 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 18-22 are allowed.

***Response to Arguments***

Applicant's arguments filed November 20, 2007 have been fully considered but they are not persuasive. Applicant argues "It is respectfully submitted the amended claim 1 is patentable over the cited art, since each of Greller, Gardiner, and Rickman lacks a contactless sensor, and one having ordinary skill in the art would not look to the cited art for a contactless sensor as in amended claim 1". In response: as clearly shown by Greller in figure 1, there is a contactless sensor, which is the receiver that receives the reflected light (3). Therefore, the rejections are maintained.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isam Alsomiri whose telephone number is 571-272-6970. The examiner can normally be reached on Monday-Friday 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Tarcza can be reached on 571-272-6979. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

February 11, 2008

/Isam Alsomiri/  
Primary Examiner, Art Unit 3662